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BEFORE THE
SURFACE TRANSPORTATION BOARD

Buckeye Hammond Railroad Company,
a Delaware Limited Liability Company

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Finance Docket Number FD 35697

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DEC 06 2012

SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICES OF EXEMPTION
UNDER 49 C.F.R. § 1150.31



By: David C. Dillon
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111 West Washington Street
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Buckeye Hammond Railroad Company

*Attorney for Applicant
in Finance Docket No 35697*

Applicant in Finance Docket No FD 35697

DATE FILED: December 5, 2012

FILED

NOV 06 2012

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TRANSPORTATION BOARD

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**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, *et seq.* and 49 U.S.C. § 10502(a), Buckeye Hammond Railroad Company, LLC, a Delaware Limited Liability Company (BHRR), a noncarrier, hereby provides this Verified Notice of Exemption from 49 U.S.C. § 10901 for BHRR's acquisition by deed from Buckeye Partners, L.P., a Delaware Limited Partnership (Buckeye), and its operation of approximately 3 miles of existing railroad right-of-way, trackage, and bulk liquid transloading facilities currently owned by Buckeye Hammond Railroad, LLC, in Hammond, Indiana ("Hammond Transload Facility trackage") The Hammond Transload Facility trackage is more specifically described and depicted in Appendix 1-A (description) and Appendix 1-B (map) attached to this notice. Buckeye Partners, L.P. has transferred ownership of the right of way, trackage, and bulk liquid transloading facilities, consisting principally of on-site pipelines, loading docks, and bulk liquid tanks to BHRR

THE BUCKEYE HAMMOND RAILROAD COMPANY TRACKAGE IS A LINE OF RAILROAD THAT QUALIFIES FOR THE CLASS EXEMPTION FROM 49 U.S.C. § 10901, RATHER THAN TRACK EXCEPTED FROM BOARD ACQUISITION AND OPERATION AUTHORITY UNDER § 10906

Buckeye Hammond Railroad Company, L.L.C. currently owns the Hammond Transload Facility. The trackage is used in conjunction with interchanging (i.e., transferring) tank cars to and from Indiana Harbor Belt Railroad

Company, containing carloads of ethanol and related liquid products for transloading of these products into tank trucks and also tank cars, some for post-transload outbound shipment by rail and some for transloading into trucks for final delivery. The transloading is accomplished by transferring product to and from tank cars into large on-site tanks, and, when BHRR's customers so order, from these tanks back into outbound rail cars and trucks.

It is expected that the initial level of operation will consist of one, 110 car inbound unit train per week, with anticipated increase to three unit trains per week. The operation will be conducted two shifts per day, five days per week. It is intended to further expand this business by seeking additional customers to utilize this facility for transloading product from tank cars to the onsite bulk tanks, and from those tanks to outbound rail cars and/or trucks.

There is currently 6,797 linear feet of track located on the Hammond Transload Facility, all of which will be operated by BHRR Railroad Company.

Under the existing circumstances, the Hammond Transload Facility trackage, as operated by BHRR, is properly considered to be a line of railroad under 49 U.S.C. § 10901 pursuant to the Board's tenant-use test, rather than spur, switching or side tracks excepted from Board authority over their acquisition and operation by virtue of 49 U.S.C. § 10906. The tenant-use test is described in the Board's decision denying reconsideration in *Effingham Railroad Company* -

Petition for Declaratory Order - Construction at Effingham, IL, STB Docket No. 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998, *aff'd sub nom United Transp Union v. Surface Transportation Board*, 183 F 3d 606 (7th Cir. 1999).

In that case, as here pertinent, Agracel Corporation transloaded beer from rail to truck at a warehouse that it operated in an industrial park at Effingham, IL. Agracel owned approximately 206 feet of right-of-way and track that extended between its warehouse and trackage owned and operated by Conrail. Previously, Conrail had operated over the Agracel trackage to provide service to Agracel. It was proposed that Effingham Railroad Company (ERRC), a noncarrier, substitute for Conrail as provider of the rail service over the Agracel trackage. ERRC filed a notice of exemption under 49 C.F.R. § 1150.31 for its operation over that trackage. The United Transportation Union (UTU) contended that the Board lacked authority over the proposed operation because Agracel trackage is spur, switching or side track excepted from Board operation authority under 49 U.S.C. § 10906.

In finding that the Agracel trackage was a line of railroad under 49 U.S.C. § 10901, the Board said (1998 STB LEXIS 253, at 8-9 (emphasis in original)).

(I)n those cases where a tenant railroad's intended use of a track segment is different from the use made by the railroad owning the track, we have determined that the tenant's use, rather than the character of the trackage itself, is controlling with regard to its own operations, subject to consideration of the purpose and effect of the construction under *Texas & Pacific* (citations omitted).

In the initial notice, even under its new approach, ERRC became the operator of a line of track connecting Conrail to the site of the industrial park. Conrail clearly had operated this short track segment as an exempt siding or spur. However, because it was ERRC's initial railroad operation, this track segment became ERRC's entire line of railroad and was not, as to ERRC, a siding or spur. This small piece of trackage initiated ERRC's service from a connection or interchange point with Conrail to a shipper's facility within the industrial park. Thus ERRC's becoming the operator was the proper subject of the initial notice of exemption and was not statutorily exempt under section 10906.

In upholding the Board's decision in that case, the reviewing court held that it was reasonable for the Board to classify the trackage by virtue of the tenant's use *United Transp. Union vs. Surface Transportation Bd.*, *supra*. 193 F.3d at 614 *Accord: Chicago Rail Link LLC - Lease & Oper - Union Pacific R.R Co.*, 2 S.T.B. 534 (1997), *aff'd sub nom. United Transp Union - Illinois v. Surface Transp.*, 169 F.3d 474 (7th Cir. 1999)

Inasmuch as the subject transaction will be BHRR's initial railroad acquisition, and the Hammond Transload Facility trackage will constitute the entire line of railroad of BHRR, it follows that the Hammond Transload Facility trackage is a line of railroad under 49 U.S.C. § 10901, rather than spur, switching or side tracks excepted from Board acquisition and operation authority by virtue of 49 U.S.C. § 10906.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) *The full name and address of the applicant,*

The full name and address of the applicant in Finance Docket Number 35697 is Buckeye Hammond Railroad Company, 2400 Michigan Street, Hammond, Indiana, 46320.

(b) *The name, address, and telephone number of the representative of the applicant who should receive correspondence;*

BHRR representative is David C. Dillon, Dillon & Nash, Ltd., 111 West Washington Street, Suite 1023, Chicago, Illinois, 60602, 312-782-9025.

(c) *A statement that an agreement has been reached or details when an agreement will be reached;*

An agreement between Buckeye Partners, L.P. and Buckeye Hammond Railroad Company concerning the acquisition by BHRR of the Hammond Transload Facility trackage and transload facilities has been reached. Buckeye Partners, L.P. has conveyed by quit claim deed the property to Buckeye Hammond Railroad Company, L.L.P.

(d) *The operator of the property:*

BHRR will be the operator of the property

(e) *A brief summary of the proposed transaction, including.*

(1) *The name and address of the entity transferring the subject property,*

The above entity in Finance Docket Number 35697 is Buckeye Partners, L.P., a non-railroad corporation, 2400 Michigan Street, Hammond, Indiana, 46320.

(2) *The proposed time schedule for consummation of the transaction,*

The operating agreement and operation are proposed to be consummated by November 1, 2012, provided that this notice of exemption has been filed at least fifteen days prior to that date.

(3) *The mile-posts of the subject property, including any branch lines, and*

The Hammond Transload Facility trackage is not described by milepost numbers. That trackage is described and depicted in Appendix 1-A and 1-B attached to this Notice.

(4) *The total route miles being acquired:*

A total of approximately 6,797 feet/1.29 miles of trackage is to be operated under an operating agreement. This track constitutes BHRR's entire line of railroad and, under well-established precedent, constitutes a line of railroad (*Effingham Railroad – Petition for Declaratory Order – Construction at Effingham, IL*, STB Docket No. 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998, *aff'd sub nom*)

(f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States.*

The required map is attached to this Notice as Appendix 1-B.

(g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.*

The required certificate is attached to this Notice as Appendix 2.

CAPTION SUMMARY

A caption summary required by 49 C.F.R. § 1150.34 for Finance Docket Number FD 35697 is attached to this Notice as Appendix 3.

ENVIRONMENTAL AND HISTORIC REPORT

The proposed acquisition and operation do not require environmental and historic reporting. See 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10901©, labor protection requirements do not apply to this transaction

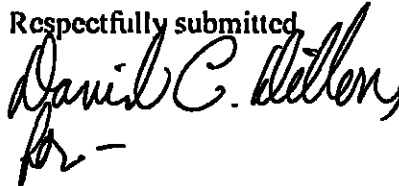
VERIFICATION

The verification is attached to this Notice as Appendix 4.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 30 days of the filing of this Notice, the Director of the Board's Office of Proceedings should publish notices in the Federal Register of the filing of notices of exemption in Finance Docket No. 35697. See 49 C.F.R. § 1150.32(b)

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David C. Dillon", with a horizontal line underneath.

By: David C. Dillon
Dillon & Nash, Ltd.
111 West Washington Street, #1023
Chicago, Illinois 60602
(312) 782-9025

Buckeye Hammond Railroad Company

*Attorney for Applicant
in Finance Docket No. FD 35697*

Applicant in Finance Docket No. FD 35697

DATE FILED: December 5, 2012

Finance Docket Number: FD 35697

Appendix 1-A

LENGTH OF BUCKEYE HAMMOND RAILROAD COMPANY
HAMMOND TRANSLOAD FACILITY

Total Track 6,797 linear feet = 1.29 miles of track

CONTAINING FIFTY-THREE SQUARE FEET OR 16,440 SQUARE INCHES. MORE OR LESS

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CERTIFICATION UNDER 49 C.F.R. § 1150.33(g)

Buckeye Hammond Railroad Company hereby certifies under 49 C F R § 1150.33(g),
that the projected revenues from the acquisition and operation proposed in this matter do not
exceed those that would qualify it as a Class III rail carrier



David C. Dillon
Authorized Representative of
Buckeye Hammond Railroad Company

SUBSCRIBED AND SWORN TO before
me this 5th of December, 2012.


Notary Public

Appendix 3
Finance Docket No. FD 35697

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO FD 35697

**BUCKEYE HAMMOND RAILROAD COMPANY
- ACQUISITION EXEMPTION -
RAIL LINE OF BUCKEYE PARTNERS, L P.
AT HAMMOND TRANSLOAD FACILITY, HAMMOND, INDIANA**

Buckeye Hammond Railroad Company(BHRR), has filed a Notice of Exemption to acquire and operate from Buckeye Partners, L P., a non-carrier, approximately 1.29 miles of right-of-way and trackage at Buckeye Partners, L P.'s Hammond Transload Facility in Hammond, Indiana. Comments must be filed with the Board and be served on BHRR's representative, David C. Dillon, Dillon & Nash, Ltd., 111 W Washington Street, Suite 1023, Chicago, IL, 60602, (312) 782-9025.

This Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

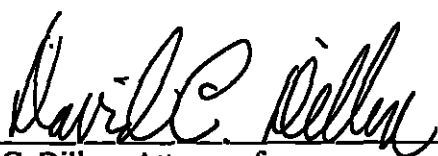
By the Board

(Seal)

VERIFICATION

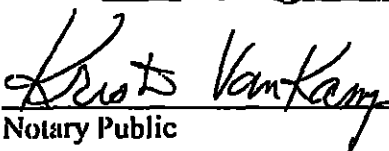
STATE OF ILLINOIS)
)
COUNTY OF COOK)

David C. Dillon, being duly sworn, states that he is an attorney for Buckeye Hammond Railroad Company; that he is familiar with the factual allegations made in the foregoing Notice of Exemption on behalf of BHRR; and that such allegations are true as stated



David C. Dillon, Attorney for
Buckeye Hammond Railroad Company

SUBSCRIBED AND SWORN to before
me this 5th day of December, 2012.



Notary Public

